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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

COUNT'S KUSTOMS, LLC, a Nevada corporation,

Case No.: 2:16-cv-00910-JAD-GWF

**Plaintiff,**

vs.

JOSEPH FRONTIERA, an individual, and  
RANDSTAD PROFESSIONALS US, LP a  
Delaware Corporation dba RANDSTAD  
PROFESSIONALS, DOES I-X and DOE  
CORPORATIONS XI - XX, inclusive.

**PLAINTIFF'S MOTION TO STRIKE  
DEFENDANT FRONTIERA'S MOTION  
TO DISMISS AS UNTIMELY**

RANDSTAD PROFESSIONALS US LP

#### **Counterclaimant**

VS

COUNT'S KUSTOMS, LLC

### Counterdefendant

RANDSTAD PROFESSIONALS US LP

### Cross-Claimant

VS

JOSEPH FRONTIERA

### Cross-Defendant

**PLAINTIFF'S MOTION TO STRIKE DEFENDANT FRONTIERA'S MOTION  
TO DISMISS AS UNTIMELY**

Plaintiff/ Counterdefendant, COUNT'S KUSTOMS, LLC, ("Plaintiff" or "CK"), by and through its attorney Steven Mack, Esq. of the law firm of Black & LoBello hereby submits its Motion to Strike Defendant/Cross-Defendant, Joseph Frontiera's Motion to Dismiss as Untimely.

This Motion is made and based upon the pleadings and papers filed in this matter, the Exhibits attached hereto, and any argument or other evidence produced at the time of this hearing.

DATED this 13th day of May, 2016.

~~BLACK & LQBELLO~~

STEVEN MACK, ESQ.  
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Las Vegas, Nevada 89135  
*Attorneys for Plaintiff*

## **MEMORANDUM OF POINTS & AUTHORITIES**

## I. INTRODUCTION

This is an action that exists as a result of Randstad's failure to perform basic vetting of a candidate that was provided to the Plaintiff, and that person, Frontiera, committed multiple improper and illegal acts causing substantial damages to Plaintiff.

A Complaint was filed in District Court on March 22, 2016 and served upon Defendant Randstad on March 28, 2016. Randstad filed an answer, counterclaim and cross claim on April 18, 2016.

The Complaint and Summons were served on Defendant Frontiera on April 4, 2016.

This case was removed to Federal Court on April 22, 2016.

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1           Counsel for Defendant/Counter-Defendant Frontiera first made an appearance in this case  
 2 on April 27, 2016, and then requested an extension to answer or otherwise plead to the case.

3           Counsel signed a Stipulation to Extend the Time to Respond to Initial Complaint which  
 4 was filed May 5, 2016. The Stipulation gave Defendant/Counter-Defendant Frontiera until May  
 5 9, 2016 to file a responsive pleading to Plaintiff's Complaint. Defendant/Counter-Defendant  
 6 Frontiera did not file his responsive pleading until May 10, 2016.

7           **II. ARGUMENT**

8           This Motion is made pursuant to FRCP 12(f)(2), wherein Plaintiff was served the  
 9 responsive pleading, however, the pleading was untimely, and should be stricken and Defendant  
 10 Frontiera should be forced to file an answer to the complaint.

11          Pursuant to FRCP 12(a)(1)(A) "A defendant **must** serve an answer: (i) within 21 days  
 12 after being served with the summons and complaint" (emphasis added).

13          Although an extension was granted by this Court and agreed to by Plaintiff, the extension  
 14 was granted to May 9, 2016, not May 10. The same rule applies, in that the responsive pleading  
 15 **must** be filed by the extended time. Timing rules are strictly construed.<sup>1</sup>

16          Defendant was late and the responsive pleading should be stricken.

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<sup>1</sup> *Willms v. Sanderson*, 723 F.3d 1094 (9<sup>th</sup> Cir. 2013) time frames for filing complaint objecting to discharge is strictly construed. *Eastman v. First Data Corp.*, 736 F.3d 675 (3d Cir. 2013), Timing rules are critical. Failure to strictly comply with them can result in dismissal (of an appeal in this particular case), even when counsel makes what appears to be an honest error of interpretation.

### III. CONCLUSION

Based upon the foregoing and Defendant Frontiera's failure to timely file a response to Plaintiff's Complaint, Defendant Frontiera's Motion should be stricken and he should be ordered to file an answer to the Complaint.

DATED this 13th day of May 2016.

**BLACK & LOBELLO**

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**STEVEN MACK, ESO.**

Nevada Bar No. 4000

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## **CERTIFICATE OF MAILING**

Pursuant to FRCP 5(b), I certify that I am an employee of BLACK & LOBELLO and that on the 13th day of May, 2016, I caused the above and foregoing document entitled **PLAINTIFF'S MOTION TO STRIKE DEFENDANT FRONTIERA'S MOTION TO DISMISS AS UNTIMELY** to be served as follows:

- [ ] by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and
  - [ X ] by electronic service through the Federal Court's ECF system;
  - [ ] pursuant to EDCR 7.26, to be sent via facsimile;
  - [ ] hand delivered

to the party or their attorney(s) listed below at the address and/or facsimile number indicated below:

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Joseph Frontiera

and that there is regular communication by mail between the place of mailing and the place(s) so addressed.

/s/ Shirley Blackburn  
An Employee of Black & LoBello

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